

NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rule-making information that does not fit into any other category of notice; and other types of information required by statute to be published in the *Register*. Because of the variety of material that is contained in a Notice of Public Information, the Office of the Secretary of State has not established a specific format for these notices.

NOTICE OF PUBLIC INFORMATION

DEPARTMENT OF ENVIRONMENTAL QUALITY AZPDES PESTICIDE GENERAL PERMIT

[M12-214]

- 1. Name of the agency:** Department of Environmental Quality
- 2. Title and its heading:** 18, Environmental Quality
- Chapter and its heading:** 9, Department of Environmental Quality – Water Pollution Control
- Article and its heading:** 9, Arizona Pollutant Discharge Elimination System
- Section number:** R18-9- A908, Public Participation, EPA Review, EPA Hearing
- 3. Notice of final permit determination:**

On October 31, 2011, the Arizona Department of Environmental Quality (ADEQ) issued the Arizona Pollutant Discharge Elimination System (AZPDES), Pesticide General Permit (PGP, AZG2011-001). This general permit covers qualifying discharges in Arizona, except for Indian Country as defined in 18 U.S.C. 1151; and will be effective for a period of five years from October 31, 2011 until October 30, 2016.

The Department issued this permit in response to the 6th Circuit Court of Appeals opinion in the matter of *National Cotton Council of America v. EPA* (553 F.3d 927). The Court held that the Clean Water Act unambiguously includes “biological pesticides” and “chemical pesticides” with residuals within its definition of “pollutant” and, therefore, U.S. EPA did not have the authority to exempt such discharges from permitting under the National Pollutant Discharge Elimination System (NPDES).

ADEQ published a public notice of the proposed permit action in the *Arizona Administrative Register* on February 25, 2011, and accepted public comments until March 29, 2011 (Volume 17, Issue 8, page 301). The department received comments from two separate parties on the draft permit.

ADEQ amended the draft permit, where appropriate, to address a number of the comments received. The following are the significant changes from the draft to the final MSGP:

- Clarification was added to section 1.0 (Coverage Under this General Permit) to describe permit coverage applicability for operators (decision makers and applicators).
- Section 2.1 (Effective Date of Permit Coverage) was revised to grant automatic permit coverage for all operators (except those seeking specific approval) until February 6, 2012. This will give those operators who are otherwise required to submit a NOI time to complete and submit the form, and if necessary, to prepare a Pesticide Discharge Management Plan (see permit section 6).
- Section 3.1 was renamed “Applicator’s Responsibilities” to better represent this section of the permit. The draft permit required both the decision maker and the applicator to comply with this section of the permit, even when these were different operators. In situations where the decision maker and the applicator are different, it would be impracticable for the decision maker to comply with the effluent limitations.
- Section 3.2 was revised to clarify that it is the decision maker’s responsibility to ensure the pesticide management measures (PMM) are met. The decision maker may conduct or implement the PMM either directly, or through contractual agreement with an applicator or other person; regardless, it is the decision maker’s responsibility to ensure the effluent limitations in section 3.2 are met.
- Table 3.2 (Annual Treatment Area Threshold) was moved to section 6.0 (Table 6.0). Table 6.1 in the draft permit (Pesticide Discharge Management Plan Deadline) was deleted from the final permit.
- Section 4.0 (Surface Water Quality-Based Effluent Limitations) was revised to clarify that all operators are responsible for meeting numeric and narrative surface water quality standards.
- Section 5.1 (Monitoring Requirements for Pesticide Applicators) was revised to clarify visual monitoring requirements for applicators with the focus on adverse incidents rather than equipment maintenance, calibration, repairs, etc. The corresponding section of the fact sheet was revised accordingly.
- Section 5.2 (Visual Monitoring Requirements for all Applicators) was revised to clarify visual monitoring requirements for operators (either decision maker or applicator) during post-application surveillance during the course of business. The corresponding section of the fact sheet was revised accordingly.

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- Section 7 (Corrective Action) was revised to include section 7.4.4 (Notification and Reporting for Adverse Incidents Involving Multiple Operators) to clarify that if there is more than one operator for a given pesticide discharge activity (e.g. decision maker is a different person than the applicator) that notification and reporting by any one of the operators constitutes compliance for all of the operators. The department encourages decision makers to coordinate with their applicators prior to any discharge activity to clarify roles and responsibilities, including reporting responsibilities.
- Section 7 (Corrective Action) was also revised to extend the timeframe for reporting requirements. The draft permit specified five (5) days to submit the Adverse Incident Written Report. The final permit was revised to provide thirty (30) days to submit the Adverse Incident Report (see section 7.4.2). Similarly, the timeframe for reporting spills, leaks, and other unpermitted discharges, and documentation of other corrective action were changed from five (5) days in the draft permit to thirty (30) days in the final permit (see sections 7.5.2 and 7.6).
- Section 8 (Recordkeeping and Annual Reporting) was modified to clarify recordkeeping responsibilities for all operators (section 8.1), for-hire applicators (section 8.2), and decision makers who are required to submit a NOI and prepare a PDMP (section 8.3).
- The terms “decision maker,” “applicator,” and “annual treatment threshold” were added to section 11 of the permit.

4. The final general permit and associated documents:

The final permit, fact sheet, and Department’s response to comments documents are available from ADEQ’s internet web site at <http://www.azdeq.gov/enviro/water/permits/pgp.html> and at ADEQ’s headquarters located at 1110 W. Washington St., Phoenix, AZ 85007, or contact Christopher Henninger at (602) 771-4508.